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Subject:—

Opinions under the Bombay Shops and Establishments Act, 1948.

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C O N T E N T S.

Legal Department File No. O.Shops and Estt/52.

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Section 26 of the Bombay shops and Establis. Act, 1948, provides that notwithstanding anything co. red in any other enactment, no theatre or other place of public amusement or enentertainment shall, on any day, be closed later than twelve minight midnight. The word "closed" as defined in a section 2(3) means not open for the service of any customer or open to any business conne connected with the establishment. A theatre is the premises intended for the exhibition of pictures or for dramatic performances or for any other public amusement or entertainment(see section 2(29)) and when such premises after are no longer kept open to customers for that business after 12 midnight, they can be said to have been "closed" within the meaning of section 2(3); and merely because the employees of the establishment remain on the premises after 12 midnight, it cannot be said that the theatre is kept open for the public. The employee' work on the premises after that hour must, of course, be subject to the provisions of sections 28to 30 of the Act.

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U.R.to H.D.No. 6944, dated tje 2nd May 1952.

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The word "business" used in the definition of "closed" as given in section 2(3) of the Bombay Shops and Establishments Act, 1948, means business with the public and not the internal work of the establishment. What is intended is that the establishment must not be open to any business with the public, that means, any transactions with the public. An analogy for purposes of interpreation can be gathered from the expression "business hours" which is in common use. In in erpreting this expression it has been said that this phrase is declaredm to mean not the time during which a principal requires an employee's services, but the business hours of the community generally. Similarly, in this context what is meanty by "not open to any business connected with the establishment" is not open to any transactions with the public. The menial or ministerial acts required for the purposes of closing the theatre, such as, rewinding the films., Sweeping the threatre or for the matter or that closing the doors, putting out the lights, cannot be included in keeping open the theatre for business connected with the establishment; particularly when we know that the employees' work in this behalf is subject to the provisions of section 28 to 30 of the Act.

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U.R. to L.&H.D. No 9058 dated the 30th May 1952.

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With reference to R.L.A's opinions Nos. 6944 dated 2nd May 1952 and 2058 dated the 30th May 1952, the Minister for Labour has made certain observations which may be breifly summarised as followed-

(1) The first part of the definition of the term "closed" contained in section 2(3) of the Bombay Shops and Establishments Act deals with customers i.e., those who are served by the establishment either by sale of goods or rendering any service, and the latter part deals with the internal work not connected with the public.

(2) The word "closed" is used in sections 11, 13, 19 and and 26 which are all sections dealing with the closing hour. Of these sections only section 19 specifically addes that words "for service", and section 11(1) relating to shops has a proviso about waiting customers which does not occur in section 13. Section 19 makes provision for an employee not being required to work later than 11-30 p.m. ina restaurant or eating house. From this it will be seen that the Legislature has in respect of restaurants and eating houses recognised that the employees there may be required to start work half an hour earlier and close half an hour later, but such a proviso has not been considered necessary in the case of shops (section 11), commercial establishments (section 13) or theatres (section 26). It will thus be seen that wherever the Legislautre has thought it necessary to allow time for subsidiary or ministerial or manual work, ot has so provided and particularly half an hour is allowed for restaurants. If the interpreation of the R-L.A were accepted, it would mean that in the case of of a shop, commercial establishment and

shop, commercial establishment and theatre, though they may be closed, employees can be asked to work on other subsidiary works, for example, arranging the goods, writing of the books etc. This cannot be the intentions of the legislautre.

3. Section 18 provides that the shops and commercial establishments shall remain closed on one day of the week. On the interpretation put by the R.L.A. the employees can be asked to work on that day provided it has no connection with the public and provided the other provisions of the Act are complied with. This would involve a large scale evasion of the Act.

The Minister of Labour, therefore, has expressed the view that the word "business" in section 2(3) does not refer to business relating to the public but any business connected with the establishment which might mean any of the half dozen things in connection with the theatre, shop or establishment which may be required to be done by having no direct connection with the public.

The papers are accordingly submitted to the R.L.A. for further consideration of his opinion.

Taking the first point for consideration, it must be observed that the Act applied brodly to three kinds of establishment:(1) shops and commercial establishments (Chapter III), (2) residential hotels, restaurants and eating houses(ChapterIV) , and (3) theatres or other places of public amusement or entertainment(ChapterV). In connection with each kind of establishment, the question of applying the definition "closed" would arise. The definition reads as follows;-

> " 'Closed' means not open for the service of any customer or open to any business connected with the establishment."

The Minster for Labour rightly recognises that Customers are those who are served by the establishment either by sale of goods or rendering any service.

In fact, that is exactly the definition of a "shop" in clause(27) of section 2 which says that a "shop" means any premises where goods are sold either by retail or wholesale or where services are rendered to customers. It is, therefore, apparent as the Minster & form Labour recognises that the first part of the definition is intended primarily with reference to shops; for shops as defined in the Act cannot be conceived of without reference to some business with the customer. It may also bepointed out that the analogous legislation in other countries when it deals with shops couples the provision for closing with service to customr. See the shops Regulation Act, R.S.M. 1913,c,180, s.2(13). Under the Canadian law, "closed" means not open for the serving of any customer. The use of the word"customer" is also apt in connection with restaurants and eating houses and the Act follows that usage accordingly.

Upon this interpreation it would logically follow that the second part of the definition of "closed" is intended to apply to the other kinds of establishments in relation to which, as the Minister for Labour recognises, the use of the word"customer" is inappropriate. That is why the definition uses the general word"business connected with the establishment". There is no dichotomy in the definition of "business" with outsiders and internal business; for, if that were so, the definition would become inapplicable to establishments other than shops, and restaurants and eating houses. The correct interpretation of the definition, therefore, is that the first part applies to shops and restaurants and eating houses and the second part to other establishments; but that in both instances it is the business with the public (in one instance with customers) which is primarily kept in

view,-

view, and which is relevant for the purpose of closing and not the internal ministerial or managerial business of the establishment itself.

On the second point, it must be observed that the reason why section 19 specifically refers to service is quite clear. That section not only lays down the limits when a restaurant or eating house shall be open to the public and closed to thepublic, which is what is meant by the servicex, but it also lays down the terminal points of opening and closing for the staff. The Act deals differently with different kinds of establishment;in respect of those particular kinds of establishment, namely, restaurants and eating houses it has made provision for the terminal points both for the public and the staff. The reason why provision has been made for waiting customers is also not far to seek; for such customers are peculiar to shopes and restaurants and eating houses and cannot beasked to quite because the closing hour has been reached, although the serghe may not have been finished.

The third point is that The R.L.A.'s opinion would lead to employees being asked to work on subsidiary jobs after the establishment is closed, and in particular to the evasion of the provisions of section 18. This point has been considered in R.L.A.'s opiion and it has been specifically pointed out that the employees' work in respect of theatres after the closing hour must be subject to the provisions of sections 28 to 30 of the Act. For each kind of establishmentspecial provisions for limiting the employees' work have been made in each Chapter, and no employee can, therefore, be asked to work after the closing hours if such work contravenes those provisions. On the other hand if such work does not contravene the provisions them, there should be no objection to the employee doing that work subject to such other limits as

have been laid down in the first proviso to section 19 This attention is invited to sections 11 to 15 in Chapter III, to section 21-24 in Chapter IV and section 28-30 in Chapter V. These sections would make it impossible for any employer of any of these establishments to make an employee work for longer hours than those laid down by the Act. As regards section 18 it must be observed that sub-section(2) of that section provides that it shall not be lawful for an employer to call an employee at, or for an employee to go to, his shop or commercial establishment or any other place for any work in connection with the business of his shop or commercial establishment on a day on which such shop or commercial establishment remains closed. This provision itself shows that the word "closed" has reference primarily to business with the public. If it also included the internal business, this provision would be unnecessary. In view of this rovision the intepretation put by the R.L.A. on the definition of "closed" cannot possibly lead to any evasion of section 18 regarding a holiday.

Having regard to what has been stated above, it would not seem necessary to re-consider R.L.A.'s opinions No. 6044, dated 2nd May 1952. and 9058dated 29- 30th May 1952.

If, however, the Labour and Housing Departmentx so desires, the Advocate General will be consulted and his opinion obtained.

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U.R. to L.A H.D. No 11541 dated the 12th July 1952.

Office of the R.L.A.

"Principally" meaning of- Bombay shops and Establishments Act, 1948.

"Employee" as defined in section 3(6) of the Bombay shops and Establishments Act,1948, means a person wholly or principally employed in or in connection with any establishment ect. The ordinary meaning of the word"principally is"for the most part, chiefly". If a person is employed in or in connection with an establishment for the most part of his time, he can be deemed to have been employed principally. However, this is an question of fact which has to be determined on the basis of nature of work, terms of employment and the average work turned out by an employee and the time devoted by him to do such work in comparision with the work done and the time taken by a particular employee.

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U.R.to L.&H.D. No. 12691,dated the 31st July 1952.

Office of the R.L.A.

The definition of "employee" says that the person must be wholly or principally employed. That means he must be wholly or prin as an employee spend the whole of his time in that employment which would naturali rally exclude any other employment or he must spend most of his time in which case he can be said to be principall principally employed in the employment. The latter kind of employment is consistent with occasional or subsidiary work other than the principal employment. A person who is admittedly employed as a part-time servant can never be said to be wholly empoyed nor principally employed, since it is open to him to spend the rest of his time in other employment. The application of the definition would thus depend upon thefacts of each case.

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U.R. to D.D. No. 14716/A,dated 10th September 1952.